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ance be effected upon the life of a debtor for the benefit of his creditor, and misrepresentations of material facts inducing the contract be made by the debtor, the policy will be vitiated although the beneficiary was ignorant of such misrepresentations.

TYSON V. WILLIAMSON. Decided at Richmond, January 12, 1899.—
Buchanan, J.

1. *EQUITABLE DEFENCES AT LAW—Fraud in procurement of contract—Sec. 3299 of Code—Rescission.* Fraud in the procurement of a bond was not available as a defence at common law in an action on the bond, but is so available under sec. 3299 of the Code, and under it the defendant can claim compensation or damages for the injury which he has suffered by reason thereof, but the plea must allege the amount to which the defendant is entitled by reason of the matters contained therein. The plea, however, under the statute, is not available as a defence to a bond given for the purchase price of real estate, if the defence is such as to require a rescission of the contract, and a reinvestment of the vendor with the title to the property.

2. *DAMAGES—Fraud in procurement of contract.* Damages for fraud in the procurement of a contract for the sale of land must be ascertained and fixed as of the date of the contract, and not as of the date of a plea to an action on the contract. A plea which avers that the land was worthless at the time the plea was filed is bad.

3. *INSTRUCTIONS—Evidence to support.* If there is any evidence tending to prove the facts upon which an instruction is based, and it correctly states the law applicable thereto, it should be given.

4. *PLEADING—Action by payee and nominal owner of bond—Defences against real owner.* The real owner of a lot, without disclosing his ownership, represented to the defendant that the plaintiff was the owner, and sold it to the defendant as the plaintiff's property, and took the bond of the defendant therefor payable to the plaintiff.

Held: In an action on the bond by the obligee against the obligor, the defendant may make the same defences as he could have made if bond had been payable to the real owner, and had then been assigned by him to the plaintiff.

HOGUE & HUTCHINSON V. TURNER.—Decided at Richmond, January 12, 1899.—*Riely, J.*

1. *EVIDENCE—Competency of husband and wife—At common law—In Virginia—Conveyances from husband to wife.* At common law husband and wife were incompetent to testify for or against each other in any matter in which either had an interest directly involved in the suit, whether parties thereto or not; and, although disqualifications on account of interest have been removed in this State, the common law disqualification of husband and wife to testify for or against each other has been retained in proceedings by creditors to avoid or impeach conveyances, gifts or sales from one to the other on the ground of fraud, or want of consideration.

2. *HUSBAND AND WIFE—Fraudulent conveyances—Remedy of creditor—Competency of husband and wife to testify.* Creditors seeking to avoid a conveyance of

personal property from a husband to his wife, on the ground of fraud, may either sue in equity to avoid the conveyance and subject the property, or they may ignore the conveyance and, after obtaining judgment, levy an execution on the property and sell it. In the latter case, if the wife claim the property levied on for her husband's debts, and if an indemnifying bond be given for her protection, she may assert her claim by a suit on the indemnifying bond, but in neither case is either husband or wife a competent witness. A wife may testify where the cause is her own and her husband has no interest in the result of the suit, though a nominal party to it, but not where the gist of the transaction is the fraudulent transfer of property from one to the other.

3. EVIDENCE—*Witness—Competency.* If a witness is competent to give evidence at all in a cause, he may be examined upon any matter in the record, and is not competent for one purpose only.

4. SECTION 2877 OF CODE—*Doing business as "agent," "factor," etc.—Knowledge of creditor as to who principal is.* The provisions of sec. 2877 of the Code relating to doing business as a trader with the addition of the words "factor," "agent," etc., without disclosing the name of the principal, apply without regard to knowledge by the creditor of the principal, if principal there be. Knowledge or want of knowledge plays no part in the application of the statute. It is an immaterial matter.

5. PRINCIPAL AND AGENT—*Proof of agency—Acts and declarations of agent—Presence of principal.* Declarations or acts of an agent cannot be accepted to prove his agency. That fact must be proved by other evidence and must be first established before his declarations or acts are admissible as evidence. But declarations and acts tending to establish the agency, said or done by the agent in the presence of the principal, and not repudiated by him, are admissible in evidence as tending to prove the agency.

6. INSTRUCTIONS—*When not too late.* An instruction does not come too late because offered during the closing argument before the jury.

7. HUSBAND AND WIFE—*Presumption as to ownership of property in possession of wife.* In a contest between a wife and the creditors of her husband, the law presumes that the husband is the owner of all property acquired, or of which the wife may be in possession, during the coverture.

BRADSHAW V. BRATTON.—Decided at Richmond, January 12, 1899.

Keith, P. Absent, Cardwell and Riely, JJ:

1. VALUABLE CONSIDERATION—*Refraining from suit—Judgments.* Refraining from instituting proceedings to subject land to the payment of a judgment which is a lien thereon, on a written promise by the owner of the land to pay the judgment, constitutes a valuable consideration for the promise to pay the judgment, although the land owner was not previously liable for the judgment.

2. JUDGMENTS—*Fraud in procurement.* A charge that a confession of judgment was obtained by fraudulently representing that the lien on the defendant's land for which the judgment was confessed, was still in force, when in fact it was at the time barred by the statute of limitations, of which the defendant was ignorant, is not sustained where it appears that, while the lien was in force, the defendant, for